



Proposed Regulation
Agency Background Document

Agency name	Department of Education
Virginia Administrative Code (VAC) citation	8 VAC 20 -730-10
Regulation title	Regulations Governing the Collection and Reporting of Truancy Related Data and Student Attendance Policies
Action title	Procedures for the collection of truancy data and unexcused/non-verified absence intervention process and responsibilities .
Date this document prepared	December 10, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The proposed regulations are new. The regulations set criteria for truancy data collection and a procedure for intervening with a student who has unexcused absences. The regulations provide definitions to promote consistent data collection and reporting among school divisions and to the Virginia Department of Education (VDOE). Attendance data will be used to establish and revise school attendance policies and best practices to engage students in daily attendance. Procedures and responsibilities are defined for providing intervention and support services to increase school attendance and attachment. Finally, the regulations direct a referral to court services when a student is noncompliant with compulsory attendance law.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

There are no acronyms or technical terms that are not also defined in the definitions section of the regulations.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s),

if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

§ 22.1-16. Bylaws and regulations generally.

“The Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title.”

§ 22.1-254. Compulsory attendance required; excuses and waivers; alternative education program attendance; exemptions from article.

A summation of the compulsory attendance code relevant to this regulation is as follows:

“Any child five years old on or before September 30 of each school year and who has not reached eighteen years of age shall be enrolled and attend a public, private, denominational, or parochial school, or be home schooled in accordance with state regulations. A local school board may excuse a youth from attendance under certain circumstances as described in subsection B and C of § 22.1-254.”

§ 22.1-269. Board to enforce.

The *Code of Virginia* authorizes and requires the Board of Education to enforce Virginia’s compulsory school attendance statutes as follows:

“The Board of Education shall have the authority and it shall be its duty to see that provisions of this article are properly enforced throughout the Commonwealth.”

§ 22.1-258. Appointment of attendance officers; notification when pupil fails to report to school.

In summary, the *Code of Virginia* requires each school division to create an attendance plan for any student with five unexcused absences and to schedule a conference with parents after the sixth unexcused absence ... upon the next unexcused absence by such pupil, the school attendance officer shall enforce compulsory attendance by “(i) filing a complaint with the juvenile and domestic relations court alleging the pupil is a child in need of supervision as defined in § 16.1-288 or (ii) instituting proceedings against the parent pursuant to § 18.2-371 or § 22.1-262....”

§ 22.1-261. Attendance officer to make list of children not enrolled; duties of attendance officer.

“...It shall be the duty of the attendance officer, on behalf of the local school board, to investigate all cases on nonenrollment and, when no valid reason is found therefore, to notify the parent, guardian or other person having control of the child to require the attendance of such child at the school within three days from the date of such notice.”

§ 22.1-267. Proceedings against habitually absent child.

“Any child permitted by any parent, guardian, or other person having control thereof to be habitually absent from school contrary to the provisions of this article may be proceeded against as a child in need of supervision as provided in Chapter 11 (§ 16.1-226 et seq.) of Title 16.1.”

§ 22.1-262. Complaint to court when parent fails to comply with law.

“...If the parent (i) fails to comply with the provisions of § 22.1-261 within the time specified in the notice; or (ii) fails to comply with the provisions of § 22.1-254; or

(iii) refuses to participate in the development of the plan to resolve the student's nonattendance or in the conference provided for in § 22.1-258, the attendance officer is to provide documentation to the court regarding the school division's compliance with § 22.1-258. In addition thereto, such child may be proceeded against as a child in need of services or a child in need of supervision as provided in Chapter 11 (§ 16.1-226 et seq.) of Title 16.1."

§ 22.1-265. Inducing children to absent themselves.

"Any person who induces or attempts to induce any child to be absent unlawfully from school or who knowingly employs or harbors, while school is in session, any child absent unlawfully shall be guilty of a Class 3 misdemeanor and willfully violated the provisions of this section ... having been convicted previously of a violation of this section, ... shall be guilty of a Class 2 misdemeanor."

§ 22.1-263. Violation constitutes misdemeanor.

"Any person violating the provisions of either § 22.1-254, except for clause (ii) of subsection A, §§ 22.1-255,22.1-258,22.1-267, or the parental responsibility provisions relating to compulsory school attendance included in § 22.1-279.3, shall be guilty of a Class 3 misdemeanor that such person has been convicted previously of a violation of any provision of § 22.1-254, except for clause (ii) of subsection A, or any provision of §§ 22.1-255, 22.1-258 or § 22.1-267, such person shall be guilty of a Class 2 misdemeanor."

§ 22.1-266. Law-enforcement officers and truant children.

"A. Notwithstanding the provisions of § 16.1-246, any law-enforcement officer ... or any attendance officer may pick up any child who (i) is reported to be truant from public school by a school principal or division superintendent or (ii) the law-enforcement officer or attendance officer reasonably determines to be a public school student and by reason of the child's age and circumstances is either truant from public school or has been expelled from school and has been required to attend an alternative education program... and may deliver such child to the appropriate public school, alternative education program, or truancy center and personnel thereof without charging the parent or guardian of such child with a violation of any provision of law...."

§ 22.1-260.B – Reports of children enrolled and not enrolled; nonattendance; social security numbers required.

"At the end of each school year, each public school principal shall report to the division superintendent the number of students by grade level for whom a conference was scheduled as required by § 22.1-258. The division superintendent shall compile such grade level information for the division and provide such information to the Superintendent of Public Instruction annually."

Federal regulations, Section 4112 of the No Child Left Behind Act (NCLB), mandate truancy data to be collected at the local level by each school and be reported to the State Department of Education. Data for each individual school will be made public. The aggregated state data results will be reported to the United States Department of Education (USED).

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

It is the primary goal of the Virginia Board of Education, through these regulations, to set forth definitions for data collection, and procedures and responsibilities of the participants to address nonattendance issues. Enacting these regulations should enhance daily school attendance and decrease referrals to court services for truancy.

It is the intent of the Virginia Board of Education, through these regulations, to:

- Provide for consistent and accurate data collection and reporting
- Improve attendance related policies, procedures and evidence-based prevention and intervention practices
- Enhance school staff's capability to early identify students with nonattendance issues and to intervene and provide support and to case manage and monitor progress
- Create a positive impact on the family, the student, school divisions and court services in their efforts to improve school attendance
- Increase a student's opportunity to benefit from a quality education in preparation for a career or post-secondary education
- Create a climate for improving communication, cooperation, and coordination of services among community service agencies and public systems to address issues manifested in truancy behavior
- Encourage dissemination of information to increase public knowledge of the importance of regular school attendance and these regulations.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)

The proposed regulations are organized according to the following four sections:

The first section identified as the "Foreword," which explains the regulations' purpose and goals.

Part I, which provides the definition of terms, such as "attendance plan," "excused absence," and "unexcused absence."

Part II, which articulates the procedures and responsibilities for early identification and intervention with nonattendance behavior and the issues that manifest truancy. It delineates processes for assisting the student and family in preventing non-attendance and defines the steps to intercede.

Part III, which identifies the attendance data to be reported to VDOE that includes for each individual student: (1) all excused and unexcused absences; (2) students with five, six or more unexcused absences; (3) the number of attendance plans developed and conferences scheduled and held; and (4) the number of court referrals.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The proposed regulations pose no disadvantage to the public or the Commonwealth. The proposed regulations will serve to more accurately collect daily school attendance and nonattendance data and guide early identification and intervention processes to remove barriers that disengage a student from school, thus improving school attendance.

Students who attend school daily, kindergarten through twelfth grade, are more likely to graduate. Students who do not attend school regularly are more likely to experience academic failure, school dropout, criminal and violent acts, unemployment, substance abuse, adult criminality and incarceration, unwanted pregnancy and social isolation. Due to the strong link between truancy and these negative consequences, it is critical to address attendance issues early and effectively.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements more restrictive than applicable federal requirements.

The proposed regulations provide the necessary definitions and attendance data in order to report consistent and accurate data to the United States Department of Education (USED). In 2008, the Virginia Department of Education (VDOE) began collecting the number of unexcused absences as part of the Student Record Collection to comply with the reporting requirements for federal regulations, Section 4112 of the No Child Left Behind Act of 2001. The regulations mandate truancy data be collected at the local level by each school and be reported to the State Department of Education. Data for each individual school will be made public. The aggregate state data results will be reported to the USED.

An “unexcused absence” is defined by the USED Uniform Data Set of the Uniform Management Information and Reporting System (UMIRS) as a school division’s definition for a student’s unexcused absence for one day. No federal or state criteria are applied to the definition. These regulations will enable VDOE to receive more accurate and consistent attendance data from school divisions to be reported to USED.

Section 22.1-258 of the *Code of Virginia* addresses school attendance issues. It requires schools to make a reasonable effort to notify parents when a student fails to report to school. This section also requires each school division to create a plan for any student with five unexcused absences and to schedule a conference with parents after the sixth unexcused absence. This section further addresses the procedure for enforcement of attendance requirements. In the proposed regulations, data will be collected that correlates to this section of the *Code of*

Virginia, which is not a federal requirement. This data collection is necessary to evaluate and analyze student attendance patterns and issues at the school division and state levels. The resulting information will be used to strengthen efforts to engage students in daily school attendance.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

The regulations will affect all school divisions but none will be materially impacted disproportionately.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Town Hall Web site, www.townhall.virginia.gov, or by mail to Nancy Campbell, Virginia Department of Education, Office of Student Services, PO Box 2120, Richmond, VA 23218-2120, phone number 804-225-2910, fax number 804-786-9769 or e-mail at nancy.campbell@doe.virginia.gov.

Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</p>	<p>There is a minimal cost to the state to implement and enforce the proposed regulations. However, existing budgets should be sufficient since most of these activities and practices already exist.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>It is not possible to estimate whether there will be an increased cost due to the varying nature of the 132 school divisions. However, it is doubtful that there will be an increased cost, since many of the activities and practices proposed in the regulations exist in school divisions.</p>

Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.	School divisions and juvenile and domestic relations courts.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are 132 school divisions in the Commonwealth. Each school division has a school board with varying numbers of members and a superintendent.
All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and do include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	It is not possible to estimate the cost of the regulations due to the varying nature of the 132 school divisions. However, any cost should be minimal since the staff to execute the scope of work proposed in these regulations already exists within school divisions. The cost should be minimal, if any, since the regulations do not impose additional requirements on small businesses, individuals or other entities.
Beneficial impact the regulation is designed to produce.	These new attendance regulations will enhance accurate and consistent data collection and reporting, and evaluation and analysis, to strengthen practices to improve student attendance. Students who attend school daily are more likely to graduate from high school and be prepared for the world of work or post-secondary education.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The alternative to these regulations is to continue with the current practice of the Virginia Department of Education (VDOE) providing only technical assistance. Unexcused absence data reported to the VDOE is based on the definition declared individually by each of the 132 school divisions. This data is unreliable and inconsistent and does not provide valid information for accurate reporting, evaluation or analysis. The regulations enhance consistency in data reporting and practice, which provides a foundation for evaluation and analysis.

The proposed regulations offer attendance definitions for reporting data and implementing an early identification and intervention process. The regulations offer a process for utilizing individual student data at the school building level in order to intervene and provide support services to prevent the damaging consequences of continued absences from school. The regulations will produce more consistent data and effective practices that will assist school divisions’ continuous improvement of daily school attendance.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

This regulation does not impact small businesses.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Following the receipt of a citizen petition for rulemaking, the VDOE published the petition in the Register of Regulations in the Regulatory Town Hall as required by the Administrative Process Act in July 2010 and November 2010. Public comments were received during two 21-day public comment periods. Twelve comments were received from eleven individuals in support of the proposed regulations. No comments were received in opposition to the proposed regulations.

Commenter	Comment	Agency response
Alice Morgan-Brown, Ph.D.	"Please promulgate regulations to require more specific reporting of truancy and truancy intervention efforts."	The proposed regulations include reporting and early identification and intervention guidance.
John Butcher	Supports the promulgation of the regulation to collect the following information: students with five or more unexcused absences; number of attendance plan developed; number of conference scheduled and held; students with more unexcused absences following the conference and the number of students referred to court services and the outcome, and make it available to the public.	The proposed regulations include the collection of this information.
Tichi Pinkney Eppes, Virginia Heroes	"I support this petition."	None required.
Sarah Geddes, JustChildren, a program of Legal Aid Justice Center	Strongly supports specific reporting of truancy and truancy intervention efforts. "This data will help the state tackle truancy by setting sound policies and targeting resources where they are most needed to help improve attendance and graduation rate. Please grant the petitioner's request and draft these critical regulations."	The proposed regulations include the collection of this information.
Sue Ella Kobak	Supports the promulgation of the regulation and reporting unexcused	The proposed regulations include the reporting of unexcused absences and provide a process

	absences and engaging and encouraging parents and students in classroom instruction.	for engaging and encouraging student and parental involvement.
Christa Pierpont, Restorative Community Foundation	"I strongly support the changes which would require schools to report to the DOE the number of students who miss more than five days of school annually. Can this information be divided into excused and unexcused absence? This information gets at many issues which need to be immediately addressed on a prevention level and monitored for concerns regarding school climate."	The proposed regulations include this recommendation.
Christine Reppucci	"Please do all you can to press for regulations to require schools to report and keep clear records of truancy. These regulations will help to keep more children in school and reduce one of the major risk factors in youth truancy, school dropout, teen pregnancy, and ultimately a downward slide toward an unproductive adulthood."	The proposed regulations include this recommendation.
Liane Rozzell, Families & Allies of Virginia's Youth	Supports the Petition to Promulgate Regulations governing more specific reporting of truancy and truancy intervention efforts.	The proposed regulations include this recommendation.
John Edward Whitfield	Supports the Petition to Promulgate Regulations governing more specific reporting of truancy and truancy intervention.	The proposed regulations include this recommendation.
Brandon Wright	"I strongly support the Petition to Promulgate Regulations governing more specific reporting of truancy and truancy intervention efforts."	The proposed regulations include this recommendation.
Carrie Welch State Farm	"I think it is important we address truancy and ensure our students and their parents are held accountable for their actions. Thank you for the information."	The proposed regulations include this recommendation.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed regulations are expected to have a positive impact on the institution of the family and family stability. The intervention process is intended to: (1) empower parental authority and rights in the education of the

students as well as support parents in nurturing and supervising the student; (2) engage the student in daily school attendance in order to increase the likelihood of taking responsibility for oneself to graduate from high school to become economically self-sufficient.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please detail the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

This is a new regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, rationale, and consequences

For new chapters, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
20-730-10	Provides definition of terms	§ 22.1-16. Bylaws and regulations generally. § 22.1-254. Compulsory attendance required; excuses and waivers; alternative education program attendance; exemptions from article. § 22.1-258 Appointment of attendance officers; notification when pupil fails to report to school.	To assist readers in understanding regulations and provide for consistent implementation by school divisions

20-730-20	Provides an intervention process for increasing student attendance and making a court referral when necessary	<p>§ 22.1-261. Attendance Officer to make list of children not enrolled; duties of attendance officer.</p> <p>§ 22.1-262. Complaint to court when parent fails to comply with law. §22.1-263 Violation constitutes misdemeanor.</p> <p>§ 22.1-265. Inducing children to absent themselves.</p> <p>§ 22.1-266. Law-enforcement officers and truant children.</p> <p>§ 22.1-267. Proceedings against habitually absent child.</p>	To establish consistent and effective practices for engaging students in daily school attendance; to decrease court referrals and student dropout rates and increase graduation rates
20-730-30	Provides direction for collecting and reporting attendance data to VDOE	<p>§ 22.1-269. Board to enforce.</p> <p>§ 22.1-260. Reports of children enrolled and not enrolled; nonattendance; social security numbers required.</p>	To assist school divisions in being more consistent and accurate in reporting attendance data

Enter any other statement here

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